ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
	)	
Regulatory Treatment of Mobile Services	)	
	)	

To: The Commission

COMMENTS OF BELLSOUTH

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.
BELLSOUTH CELLULAR CORP.
BELLSOUTH WIRELESS, INC.
MOBILE COMMUNICATIONS CORPORATION OF AMERICA

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June 20, 1994

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BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., BellSouth Wireless, Inc., and Mobile Communications Corporation of America (collectively "BellSouth") hereby submit their comments in response to the Commission's *Further Notice of Proposed Rule Making* ("*FNPRM*") in this proceeding.

SUMMARY

The Federal Communications Commission ("Commission" or "FCC") must modify its existing regulatory structure, prior to August 10, 1994, to eliminate inconsistencies in the regulation of substantially similar services. [1/] In this regard, the Commission has adopted broad definitions for commercial

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1/ *See also Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Further Notice of Proposed Rulemaking*, FCC 94-100 at ¶ 2 (released May 20, 1994) ("*FNPRM*").

mobile radio services ("CMRS") and has issued the subject *FNPRM* to eliminate or reconcile inconsistent regulations. [2/]

In these comments, BellSouth urges the Commission to use a simple rule in addressing inconsistent regulations: apply to CMRS the least restrictive of each of the relevant service-specific rules. By adopting the least restrictive rules, the Commission will minimize interference with competitive market forces.

BellSouth maintains that there is no need for the imposition of a cap of any kind on the amount of spectrum a licensee can hold. Without a spectrum cap, existing mobile services evolved into today's highly competitive CMRS marketplace. In addition, the imposition of an aggregate cap would have significant adverse effects on the further development of a competitive CMRS marketplace by severely restricting the provision of nationwide service and the future development of new service offerings. In particular, if an aggregate spectrum cap is adopted, a licensee of existing services may have to choose between providing paging, cellular, PCS, or some other CMRS service, but not a combination of all such services. It is indeed ironic that as the FCC makes additional spectrum available, thereby reducing a firm's ability to exercise market power, it proposes the adoption of artificial, aggregate spectrum caps which are difficult to administer and wholly unnecessary.

Consistent with the goal of regulatory parity, BellSouth urges the Commission to ensure that *all* CMRS licensees are subject to the *same*

[2/] *FNPRM* at ¶¶ 1-2; *see also Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd. 1411, 1425-1428 (1994) ("*Second Report*").

regulations. Accordingly, transfer restrictions should be removed for all CMRS licenses awarded by competitive bidding. In addition, regulatory parity requires that all CMRS providers be eligible to provide both SMR and dispatch service and that interoperability requirements be removed from all CMRS licensees.

BellSouth generally supports the Commission's tentative conclusion that most CMRS applications should be subject to a 30 day filing window, the Commission's proposal with regard to CMRS license renewals, and the Commission's proposal to adopt liberal pre-grant construction rules for CMRS. Finally, BellSouth supports the Commission's proposal to apply rules regarding equal employment opportunities ("EEO") to all CMRS providers uniformly.

DISCUSSION

I. THE PARAMOUNT OBJECTIVE OF THIS PROCEEDING SHOULD BE THE CREATION OF REGULATORY PARITY BY REMOVING REGULATIONS FROM COMMERCIAL MOBILE RADIO SERVICE PROVIDERS

As required by the Omnibus Reconciliation Act of 1993 ("Budget Act"), [3/] the Commission has amended its rules to ensure that similar services are accorded similar regulatory treatment. [4/] Congress was concerned that "disparities in the current regulatory scheme could impede the continued growth

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3/ Pub. L. No. 103-66, Title VI, § 6002(c), 107 Stat. 312, 393 (1992).

4/ *Second Report*, 9 FCC Rcd. at 1418 (quoting H.R. Rep. 103-213, 103d Cong., 1st Sess. 494 (1993) ("Conference Report")); *see also FNPRM*, FCC 94-100. BellSouth notes, however, that while the Commission has issued this transitional *FNPRM*, it has failed to propose any rules. Until the text of the proposed rules is released, BellSouth can comment only generally about the potential impact of the Commission's proposals on CMRS.

and development of commercial mobile radio services and deny consumers the protections they need if new services such as PCS are classified as private." [5/] In order to eliminate these disparities, the Commission has appropriately adopted a broad definition for CMRS. [6/] The broad definition was designed to "ensure symmetrical regulatory treatment of competing mobile service providers." [7/] In this proceeding, the Commission must now ensure that "inconsistencies in [the] regulation of similar services are eliminated." [8/]

Given the competitive state of the services now classified as CMRS, [9/] BellSouth urges the Commission to use a simple rule of thumb in transitioning to the new CMRS/PMRS structure: apply to CMRS the least restrictive of the relevant service-specific rules. [10/] The Commission has

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5/ H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 260 (1993) ("House Report").

6/ *See Second Report*, 9 FCC Rcd. at 1425-1428.

7/ *FNPRM* at ¶ 1.

8/ *FNPRM* at ¶ 2; *see id.* at ¶ 5.

9/ *Implementation of Sections 3(n) and 332 of the Communications Act,* GN Docket No. 93-252, *Notice of Proposed Rule Making*, 8 FCC Rcd. 7988, 8000 (1993) ("*NPRM*"). For example, Personal Communications Services ("PCS") "will be subject to substantial competition, both from other PCS services . . . and from the wide range of radio-based services currently offered: cellular services, specialized mobile radio services, paging services," *etc. Id.* (quoting *Amendment of the Commission's Rules to Establish New Personal Communications Services,* GEN Docket No. 90-314, ET Docket No. 92-100, *Notice of Proposed Rulemaking and Tentative Decision*, 7 FCC Rcd. 5676, 5712 (1992) ("*PCS NPRM*")). BellSouth has previously demonstrated that the cellular market is competitive. Bell-South PCS Comments, GEN Docket No. 90-314, filed Nov. 9, 1992 at 67-69.

10/ For example, if two services are classified as CMRS but one service requires a licensee to construct 25 percent of its system within 5 years

(continued...)

recognized that "open entry and competition often bring greater benefits to customers and society than traditional regulation." [11/] By adopting the least restrictive rules, the Commission will minimize regulatory interference with competitive market forces and will eliminate the potential for any competitive advantage which might otherwise flow from being classified as a certain type of CMRS provider (*e.g.*, Designated Entities). Thus, all CMRS providers will be subject to a minimal, yet comparable, level of regulation.

[10/](...continued)
and the other requires a licensee to construct 50 percent of its system within 5 years, the Commission should impose the least restrictive 25 percent requirement. Similarly, with respect to eligibility, if two services are classified as CMRS but one service excludes wireline participation and the other allows full participation, the Commission should allow full participation.

[11/] *NPRM*, 8 FCC Rcd. at 7998, 8000; *see Policy and Rules Concerning Rates for Competitive Common Carrier Services*, CC Docket No. 79-252, *Notice of Inquiry and Proposed Rulemaking*, 77 FCC 2d 308, 313-14, 334-38 (1979) ("*Competitive Carrier Notice*"); *First Report and Order*, 85 FCC 2d 1, 1-12, 31 (1980) ("*First Report*") (subsequent history omitted). Chairman Hundt has stressed that the Commission must refrain from adopting regulations which impede competition. *Hearings on the Federal Communications Commission Before the Subcomm. on Commerce, Justice, State, and the Judiciary, Comm. on Appropriations*, 103d Cong., 2nd Sess., 1994 FCC LEXIS 1630, at *6 (Apr. 18, 1994) (Statement of Reed E. Hundt, Chairman, Federal Communications Commission) ("In fulfilling its responsibility to maintain the viability of affordable telephone service, the Commission must ensure that regulatory barriers do not artificially preclude competition."); *see also* Council of Economic Advisors, Executive Office of the President, *Economic Benefits of the Administration's Legislative Proposals for Telecommunications* 2 (June 14, 1994) ("The Administration's legislative proposals will accelerate the rate at which the telecommunications and information revolution arrives . . . by providing a mechanism for removing existing regulatory restrictions as the development of competition makes them unnecessary.").

II. THE COMMISSION SHOULD NOT IMPOSE A CAP ON THE AMOUNT OF SPECTRUM THAT CAN BE HELD BY PROVIDERS OF COMMERCIAL MOBILE RADIO SERVICES

As the Commission has indicated, the decisions in the PCS docket and the reclassification of a number of formerly private services as CMRS will increase significantly the state of competition in the CMRS marketplace. [12/] In addition, the Commission has already initiated proceedings to make more spectrum available for commercial applications. [13/] Ironically, the Commission here proposes to impose an absolute cap on the aggregate spectrum that any CMRS licensee may hold in addition to the service-specific caps of 40 MHz of Broadband spectrum and 300 kHz of Narrowband spectrum. [14/] Rather than enhance competition for wireless services, such a cap will severely inhibit the development of wireless services. There is simply no need or basis for a spectrum cap at this time.

A. Because the Commercial Mobile Radio Services Marketplace is Competitive, A Spectrum Cap is not Warranted

The primary basis stated by the Commission for a spectrum cap is a concern that a licensee may acquire "excessive market power" by aggregating

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12/ *FNPRM at ¶ 86; see also, PCS NPRM,* 7 FCC Rcd. at 5706.

13/ *Transfer of Government Spectrum Below 5 GHz,* ET Docket 94-32, *Notice of Inquiry,* FCC 94-97 (released May 4, 1994).

14/ *FNPRM* at ¶ 93.

sufficient spectrum to limit the number of potential competitors. [15/] These concerns are unfounded. Currently, there is no spectrum cap limiting the aggregation of spectrum from various services. Yet, the private carrier and common carrier paging, SMR, and cellular industries have all become highly competitive. Each of these industries, which will now be classified as CMRS, has evolved into a competitive market with participants from one industry also actively participating in others. [16/] There is no evidence that spectrum was aggregated in these services for the purpose of precluding entry of potential competitors. The development of these markets demonstrates that fears about spectrum aggregation are too speculative to warrant imposition of a spectrum cap at this time.

The new competitive bidding rules should impede the artificial aggregation of licenses, as licensees will have to pay for the spectrum. Thus, acquiring spectrum solely for the purpose of eliminating competition would be very expensive, if not cost prohibitive. In addition, under the competitive bidding rules, the presence of designated entities and their bidding preferences in various spectrum auctions will make it even more difficult for any single entity to acquire licenses solely for the purpose of establishing excessive market power and/or eliminating the potential for competition.

15/ *FNPRM* at ¶ 89.

16/ *See supra* note 9; *see also* discussion *infra* at pp. 8-10.

B. Adoption of an Aggregate Spectrum Cap For Commercial Mobile Radio Services is Inconsistent with the Record in the Narrowband PCS Proceeding

In Narrowband PCS, the Commission found that there was little possibility for a carrier to exert excessive market power. [17/] Thus, the Commission did not limit the eligibility of existing CMRS licensees to participate in Narrowband PCS. [18/] Instead, the Commission adopted rules which permitted any licensee to aggregate up to 300 kHz of spectrum for the provision of Narrowband PCS services. Such rules allow new and existing CMRS providers to offer Narrowband PCS, while ensuring a minimum number of licensees in each market.

The competitive state of "narrowband" CMRS services, such as paging, supports the Commission's position that existing licensees should be able to participate fully in the provision of Narrowband PCS services. The paging industry is "highly competitive;" [19/] "no carrier has more than a 12

17/ *See Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services*, GEN Docket No. 90-314 and ET Docket No. 92-100, *First Report and Order*, 8 FCC Rcd. 7162, 7167 (1993) ("*Narrowband Order*").

18/ *Narrowband Order*, 8 FCC Rcd. at 7167. *See also Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services*, GEN Docket No. 90-314 and ET Docket No. 92-100, *Memorandum Opinion and Order*, FCC 94-30 at ¶ 24 (released March 4, 1994) ("*Narrowband MO&O*").

19/ *Second Report*, 9 FCC Rcd. at 1468.

percent share of the paging market, and competition is increasing." [20] Indeed, the Commission has recently found that:

> . . . the paging industry has become increasingly competitive. Allocations of new spectrum, the relaxation of federal and state barriers to entry, and the growth of subscriber demand have resulted in numerous well-financed competing paging entities in virtually every market. These companies compete on the basis of geographic service area, customer service, enhanced services, and price. This highly competitive environment encourages paging carriers to provide an acceptable quality of service or risk losing customers to competitors. [21]

There are over 60 paging providers in many cities, including Atlanta, Georgia, Miami, Florida, Orlando, Florida, and New Orleans, Louisiana. [22] On average, a paging carrier competes with five other paging carriers in a given market. [23] In addition, the number of paging subscribers has increased while the price of both pagers and paging services has decreased. [24]

In this competitive environment, many carriers have already aggregated in excess of 300 kHz in one or more markets in order to support various narrowband applications. No one has suggested that such aggregation

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[20] *See, e.g., Amendment of the Commission's Rules to Permit Private Carrier Paging Licensees to Provide Service to Individuals,* PR Docket 93-38, *Report and Order*, 8 FCC Rcd. 4822, 4823 n.25 (1993).

[21] *Amendment of Part 22 of the Commission's Rules to Delete Section 22.119*, CC Docket No. 94-46, *Notice of Proposed Rulemaking*, FCC 94-113 at ¶ 6 (released June 9, 1994) (footnotes omitted).

[22] *See* The 1993 Paging/PCS Directory, BIA Publications, Inc., Tab IV (listing the number of paging providers in various cities).

[23] *Second Report*, 9 FCC Rcd. at 1468 (citing a recent study).

[24] *Second Report*, 9 FCC Rcd. at 1465 (referencing Comments of Pagenet in GN Docket 93-252, at 20-21), 1468.

has created any adverse impact on the marketplace; to the contrary, such developments have furthered vigorous competition at the nationwide, regional, and local levels. Notwithstanding the aggregation of paging spectrum by existing licensees, the Commission has found the CMRS marketplace sufficiently competitive to allow these licensees to acquire up to an additional 300 kHz of Narrowband PCS spectrum. [25/] In fact, the Commission adopted its 300 kHz Narrowband PCS cap in an effort to promote similar aggregations in Narrowband PCS. [26/] Accordingly, service-specific spectrum caps are unnecessary.

The Commission's proposal in this proceeding to impose an *aggregate* cap of 300 kHz on the amount of narrowband spectrum that can be held by any licensee, existing or otherwise, is entirely inconsistent with its discussion on Narrowband PCS. The aggregate cap proposed for narrowband CMRS would effectively prohibit existing licensees providing multiple offerings in one type of CMRS from providing another type of CMRS. Given the Commission's findings with regard to Narrowband PCS, however, there is no basis for imposing a spectrum cap for narrowband CMRS licensees generally.

25/ Mobile Communications Corporation of America ("MCCA") provides local, wide area, regional, and nationwide paging services and has exceeded 300 kHz in some markets without obtaining market power. As MCCA has aggregated this spectrum for the purpose of providing the competitive service offerings desired by its subscribers, it should not be penalized by the Commission with regard to its participation in any other service.

26/ *See Narrowband Order*, 8 FCC Rcd. at 7168.

C. The Commission Can Address Concerns Such As Excessive Market Power Without A Spectrum Cap

A spectrum cap is not necessary because the Commission has other means for addressing its concerns regarding the acquisition of excess market power through spectrum aggregation. For example, the Commission can refuse to grant CMRS transfer and assignment applications, if such applications further aggregate CMRS licenses, by finding that such aggregation does not promote the public interest. [27/] At a minimum, the Commission can remedy inappropriate spectrum aggregation at renewal.

In addition, a spectrum cap introduces numerous administrative complexities at a time when Congress has sought to achieve a simpler, fairer regulatory structure for the development of wireless services. The *FNPRM* identifies some of these problems: attribution of shared spectrum, classification of CMRS services to determine whether they are adequately "like" to warrant inclusion in the cap; inclusion of mobile satellite spectrum; and enforcement issues associated with the attribution of ownership and service area overlaps. Loopholes and inequities will inevitably be created, [28/] with the potential that

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27/ The Commission is currently addressing such concerns with regard to the AT&T-McCaw Merger applications. *See* AT&T-McCaw Merger Applications, File No. ENF-93-44.

28/ In SMR for example, the Commission established barriers to entry by precluding wireline eligibility. Subsequently, Enhanced SMR developed. ESMR operators are competitors to cellular and can hold cellular licenses, whereas cellular operators cannot hold ESMR licenses. Indeed, the Commission's experience with these and other artificial barriers to entry, *e.g.*, the previous wireline/non-wireline eligibility restrictions for common carrier paging channels, suggests that if a spectrum cap is adopted, it will become an anti-competitive tool for incumbent carriers to attempt to exclude certain licensees from participating in certain

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the differences in regulatory structure that Section 332 sought to eliminate will remain.

Given the complexities of a spectrum cap, the recognition that competition suggests regulatory forbearance, [29/] and the lack of a record indicating that CMRS will not be competitive (in fact the existing record would suggest otherwise), the Commission should either reject or not decide the spectrum cap issue in this proceeding. Further, spectrum caps are not necessary to ensure that similar services are subject to the same regulations. Accordingly, the Commission should not rush to judgment on such caps in order to meet the August 10, 1994 statutory deadline for rule changes necessary to create regulatory parity.

III. TRANSITIONAL RULES SHOULD ASSURE THAT ALL COMMERCIAL MOBILE RADIO SERVICE PROVIDERS ARE TREATED ALIKE

The Commission has undertaken here to create the regulatory parity mandated by the Budget Act by transitioning Part 22 and Part 90 licensees into a uniform CMRS regulatory structure. In doing so, the Commission should ensure that *all* CMRS licensees are subject to the *same* regulations. In analyzing the various rules for services now encompassed under the CMRS umbrella, the Commission should apply the least restrictive of the service-

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[28/](...continued)
services, rather than a barrier to any one carrier aggregating spectrum for anti-competitive purposes.

[29/] *See supra* note 11.

specific rules to all types of CMRS to ensure the regulatory parity mandated by Congress.

A. Transfer Restrictions Should Be Removed From All Commercial Mobile Radio Service Licenses Awarded Through Competitive Bidding

As competitive bidding apparently will be used for the vast majority of CMRS licenses, there is little need for restrictions on the alienability of licenses. To the extent alienability restrictions are premised on warehousing concerns, the Commission has indicated that construction requirements can be used to alleviate those concerns and make the restrictions unnecessary. [30/] To the extent alienability restrictions are premised on unjust enrichment concerns, the new competitive bidding rules dealing with unjust enrichment should obviate such concerns. [31/]

The Commission should therefore adopt streamlined procedures and applications for transfers and assignments, not unlike those currently governing Part 90 licensees. [32/] While BellSouth recognizes that not all CMRS transfer and assignment applications can be exempt from public notice, [33/] the

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30/ *Implementation of Section 309(j) of the Communications Act*, PP Docket No. 93-253, *Second Report and Order*, 75 Rad. Reg.2d (P&F) 1, 45 (1994) ("*Auction Rules*"); *Third Report and Order*, FCC 94-98 at ¶63 (released May 10, 1994).

31/ *Implementation of Section 309(j) of the Communications Act*, PP Docket No. 93-253, *First Report and Order*, 74 Rad. Reg.2d (P&F) 700, 701-02 (1994).

32/ *See* 47 C.F.R. § 90.153. The Commission retains the authority to determine the competitive effects of any merger. 47 U.S.C. § 309(d),(e).

33/ *See* 47 U.S.C. § 309(b),(c).

Commission should (1) eliminate any need for approval of purely internal changes in corporate or organizational structure, (2) deem *pro forma* transfers and assignments granted effective upon filing with the Commission, [34/] and (3) adopt rules which permit the partitioning of licenses, through the subdivision of frequency blocks or service areas. [35/] These proposals will promote the Commission's goal of increasing competition in the CMRS marketplace and will enable licensees to engage in transactions which alter their "boundaries" in response to changing market conditions. In addition, these proposals will substantially reduce the burden and expense involved in many transfers and assignments and will not impair the Commission's oversight of licensee activities or qualifications. Further, the proposal regarding purely internal corporate reorganizations will conserve Commission resources by eliminating the need for processing hundreds or thousands of *pro forma* transfer and assignment applications each year.

B. All Commercial Mobile Radio Service Providers Should be Eligible to Provide Dispatch Service

Certain private carriers currently providing dispatch service will be characterized as CMRS providers and will be permitted to continue providing dispatch service under the new regulatory scheme. [36/] Congress expressed a desire, however, for the Commission "to decide whether all common carriers

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[34/] *See* Comments of BellSouth, CC Docket 92-115, filed Oct. 5, 1992.

[35/] The Commission should issue a separate license for each partitioned area as it does under Part 22 for cellular licenses.

[36/] 47 U.S.C. § 332(c)(1)(D)(2) (1991 & Supp. 1994).

should be able to provide dispatch service." [37] Further, Section 332(c)(2) expressly authorizes the Commission to eliminate the prohibition on wireline carriers providing dispatch service. [38] Elimination of the dispatch prohibition will clearly benefit customers by increasing competition for their business. Given the goal of promoting regulatory parity and the express authority given to the Commission to eliminate the prohibition, the Commission should eliminate the prohibition in this proceeding without delay so that all CMRS providers can begin providing dispatch service immediately.

C. The Commission Should Remove Interoperability Requirements From All Commercial Mobile Radio Service Licensees

The Commission currently requires all cellular telephones to be capable of operating on all cellular channels and to be capable of interaction with all cellular systems. [39] Such a requirement is actually counterproductive in the current CMRS environment. In each cellular market, for example, two cellular licensees compete against each other and ESMR providers, to the extent there is an ESMR provider in the particular market. Thus, in order to remain competitive, cellular licensees must be responsive to consumer needs. Ensuring that cellular telephones owned by subscribers will work on a carrier's cellular system increases customer satisfaction and carrier revenue. A cellular licensee is unlikely to change its system in a manner that makes a subscriber's

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[37] Conference Report at 492 (discussing House bill); House Report at 261.

[38] 47 U.S.C. § 332(c)(2) (1991 & Supp. 1994).

[39] *See* 47 C.F.R. § 22.915(a); *see also FNPRM* at ¶ 56.

phone obsolete if such a change will alienate the subscriber and result in the subscriber switching to a competitive provider.

In CMRS, it is likely that interoperability will develop without a specific requirement. CMRS providers will have market-based incentives to develop and conform to standards in order to attract customers for new services, expand service offerings, and compete with existing services. If existing CPE can be used for a new service, carriers will be able to attract customers whose equipment can currently use the service. On the other hand, requiring interoperability will retard the introduction of new technologies and services that will not be interoperable. Accordingly, additional regulation is not necessary and existing interoperability requirements should be eliminated.

IV. BELLSOUTH SUPPORTS THE COMMISSION'S TENTATIVE CONCLUSION THAT MOST COMMERCIAL MOBILE RADIO SERVICE APPLICATIONS SHOULD BE SUBJECT TO A 30 DAY FILING WINDOW

BellSouth agrees with the Commission's tentative conclusion that 30 day filing windows should be used for most CMRS applications and has previously supported replacing 60 day filing windows for mutually exclusive Part 22 applications with 30 day filing windows. [40/] Unlike the first-come, first-served procedure currently used for Phase II cellular unserved area applications, a 30 day filing window provides existing licensees and potential applicants notice of the filing of an application that may adversely affect their

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[40/] Comments of BellSouth, CC Docket 92-115, filed Oct. 5, 1992; *see Revision of Part 22*, CC Docket 92-115, *Notice of Proposed Rulemaking*, 7 FCC Rcd. 3658 (1992), *summarized*, 57 Fed. Reg. 29,260 (1992).

business plans and provides a window within which they may file competing applications.

The current first-come, first-served procedure used for Phase II cellular unserved area applications hinders the potential for filing legitimate applications in response to a filing which adversely impacts another carrier's business plan. Existing licensees now must file Phase II applications, which they would otherwise prefer to file at a later date, on the first day of the filing period or risk losing areas that are integral parts of their business plans. While BellSouth did not originally propose changing the rules for Phase II of the cellular unserved area application process, [41/] its subsequent experience in this area suggests that the Commission should eliminate the first-come, first-served processing of Phase II unserved area applications and adopt 30 day filing windows for most initial and major modification applications. [42/]

41/ *See* Comments of BellSouth, CC Docket No. 90-115, filed Oct. 5, 1992.

42/ BellSouth stresses, however, that the Commission should make clear that 30 day filing windows will not be created for cellular major modification applications. See *Maxcell Telecom Plus, Inc. v. FCC*, 815 F.2d 1551 (D.C. Cir. 1987). In addition, BellSouth suggests that the Commission make all CMRS filings available electronically. If a CMRS filing is made which improves a competitor's service, a competing licensee should be able to retrieve the filing instantly so that it can decide whether or not it wants to file a competing application during the filing window. If filings are made available electronically, competitive responses can be made faster. If competitive responses occur faster, a market becomes more competitive, prices become lower, and consumers benefit.

V. CELLULAR RENEWAL PROCEDURES SHOULD APPLY TO ALL COMMERCIAL MOBILE RADIO SERVICE PROVIDERS

The Commission's proposal to establish a uniform 10 year license term and to extend existing rules and case law regarding renewals to all CMRS licensees is a good one. [43/] The Commission should apply *cellular* renewal procedures, however, to all CMRS licensees. [44/] Pursuant to cellular renewal procedures, a two-step hearing procedure would apply in contested renewal cases. Under the first step, an ALJ would decide whether an incumbent licensee's application should be granted a renewal expectancy. If the ALJ finds that the incumbent licensee's performance during the license term qualifies it for such a renewal expectancy, the incumbent's renewal application must be granted and competing applicants will be deemed ineligible and their applications will be dismissed. If the renewal expectancy is denied, however, there must be a comparative hearing (step two) between the incumbent and competing applicants.

CMRS renewal procedures should be adopted immediately to provide licensees with standards to follow during their license terms. Adoption of the cellular renewal procedure for all CMRS licenses will promote regulatory parity by subjecting similar services to the same renewal standard.

43/ *FNPRM* at ¶ 140.

44/ *See Amendment of Part 22 Relating to License Renewals*, CC Docket No. 90-358, *Memorandum Opinion and Order*, 8 FCC Rcd. 2834 (1993).

Accordingly, BellSouth urges the Commission to apply the cellular renewal standard to all CMRS licenses.

VI. COMMERCIAL MOBILE RADIO SERVICE PROVIDERS SHOULD BE ABLE TO COMMENCE CONSTRUCTION AT ANY TIME, PROVIDED THEY HAVE COMPLIED WITH RELEVANT ENVIRONMENTAL AND FEDERAL AVIATION ADMINISTRATION RULES

BellSouth supports the Commission proposal to adopt liberal pre-grant construction rules for CMRS which would allow CMRS licensees to commence construction at any time provided they have complied with relevant environmental and aviation hazard rules. [45/] BellSouth urges the Commission to clarify, however, that compliance with Federal Aviation Administration ("FAA") rules is sufficient for pre-grant construction, provided environmental rules are also complied with prior to commencing construction. Unlike Part 90, Part 22 currently stipulates that an applicant cannot commence pre-grant construction until it has filed a notice of proposed construction with the FAA *and* has received a determination *from the Commission* as to any required antenna structure marking and lighting requirements. [46/] As the construction permit is not issued until after grant of the underlying application, pre-grant

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45/ *FNPRM* at ¶ 137.

46/ 47 C.F.R. § 22.43(d)(3). Because the rules currently require a determination as to marking and lighting from the Commission prior to commencing pre-grant construction, applicants are generally not able to commence construction of a new structure because they do not receive any information from the Commission regarding marking and lighting until they receive a copy of the construction permit.

construction is effectively prohibited. In adopting CMRS rules, the more liberal allowances available to Part 90 licensees should be adopted. [47/]

VII. EQUAL EMPLOYMENT OPPORTUNITY RULES SHOULD BE EVENLY APPLIED TO ALL COMMERCIAL MOBILE RADIO SERVICE PROVIDERS

Consistent with the Congressional mandate to create symmetrical regulatory treatment for competing mobile service providers, [48/] EEO rules should apply to all CMRS providers. [49/] Application of existing EEO rules for Part 22 to all CMRS providers would be the most efficient means for creating regulatory symmetry. There is no need to waste valuable Commission resources in order to determine whether new EEO rules should be adopted for all CMRS providers.

VIII. PHASE II OF 900 MHz LICENSING SHOULD PROCEED EXPEDITIOUSLY

Given the Commission's tentative conclusion that "licensing of 900 MHz could readily proceed on an MTA, BTA, and nationwide basis," [50/] the

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47/ *See* 47 C.F.R. § 90.159(b).

48/ *See Second Report*, 9 FCC Rcd. at 1418 (quoting Conference Report at 494); *see also* House Report at 259-60; *FNPRM* at ¶ 1.

49/ Part 22 currently prescribes two filing deadlines -- April 1st for initial EEO programs and changes to existing programs, and May 31st for filing EEO reports and status of complaints. *See* 47 C.F.R. §§ 22.307(c)(i)(A), (d)(1). Although the two filings do not impose a great burden on licensees, BellSouth recommends that the Commission consolidate the filing deadlines such that only one annual filing is required on May 31st of each year.

50/ *FNPRM* at ¶ 34.

Commission should begin Phase II 900 MHz SMR licensing expeditiously. To date, unlike 800 MHz SMR systems, 900 MHz SMR systems have only been allowed to expand on a secondary, unprotected basis, while the Commission pondered the merits of various geographic licensing schemes. This has inhibited the ability of 900 MHz SMR licensees to build wide-area systems to compete effectively in the wireless marketplace. Further delay in Phase II licensing is inconsistent with the regulatory parity mandated by Congress.

CONCLUSION

For the foregoing reasons, BellSouth submits that the public interest would be served by adoption of its proposals set forth above.

Respectfully submitted,

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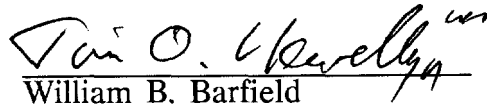
By: 

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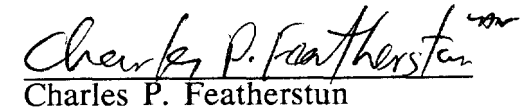

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